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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC RYAN HAYDE,

Defendant and Appellant.

G055346

(Super. Ct. No. 13CF1341)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Patrick Donahue, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, Michael Pulos and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

Eric Ryan Hyde appeals from a judgment after a jury convicted him of weapons, ammunition, and forged document offenses. Hayde argues the following: the trial court erred by admitting statements he made at the preliminary hearing while representing himself; the court erred by admitting a business record; and there was cumulative error. As we explain below, we conclude Hayde was not prejudiced by any errors. We affirm the judgment.

### FACTS

Hayde, who was about 46 years old, met Deanna Witham, who was retired, at church in November 2012. Over the next six months, they got to know each other well. Witham was building a basement and closet in her home, and Hayde helped with the construction. Hayde moved into Witham's home; he kept his apartment.

Before she met Hayde, Witham was not interested in guns but a family member suggested she get one for self-protection. After she met him, Witham and Hayde went to a store and she bought a .38 special handgun. Before she bought the gun she researched guns on the Internet "a little bit" and spoke with Hayde.

In early 2013, Witham's nephew told her about an upcoming gun show in Portland, Oregon. In March 2013, Witham and Hayde drove to Portland for the gun show; Witham's intent was to buy ammunition. In preparation for the trip, Hayde gave Witham a list of ammunition to buy.

Witham and her nephew went to the first day of the gun show; Hayde was sick and did not go. Witham, who was about 72 years old, bought a Russian SKS rifle from an individual in the lobby for \$1,000. She also bought ammunition from Hayde's list. Witham bought the rifle for protection because all she had was a small handgun.

The next day, Hayde, Witham, and her nephew went to the gun show. Because she could not buy a gun at the show, Witham bought another rifle from a person outside of the gun show. Later that day, Witham purchased a small black handgun and ammunition from her sister.

Hayde and Witham drove back to California and straight to Hayde's storage unit at Security Public Storage (SPS) in Brea. Witham had been to SPS with Hayde once before, but she did not have a key to the unit. While Witham sat in the car, Hayde put the two rifles and the ammunition in the storage unit. Witham did not want the rifles in her home until construction was finished. She did not know much about the guns she purchased, how to load them, or how to use them. She did know Hayde could not possess them because he was a convicted felon.

About noon on April 23, 2013, Witham and Hayde went to the County of Orange Public Works department. Patrick Kinney, an Orange County Sheriff's Department (OCSD) investigator, and another investigator were waiting for them armed with a search warrant for the storage unit.<sup>1</sup> They interviewed Witham separately. Witham first denied knowing where the weapons she purchased were but later admitted Hayde put them in his storage unit. Witham initially denied knowing where the storage facility was located but later admitted it was in Brea and she had been there. They searched Hayde and found three sets of keys. He also had two driver licenses in his possession: one was in his name and had his picture, and the other also had his picture but showed the name of "James Anderson."

Later that evening, Kinney and the other investigator executed a search warrant for storage unit F69 at the Brea SPS; Witham led them to the unit. Two of Hayde's opened the locks on unit F69. In unit F69, investigators found a Russian SKS rifle, an AK-47 rifle, a Romarm SAR-1 rifle, a Glock 9mm handgun, and a stun gun.

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<sup>1</sup>

How Kinney learned of this storage unit at SPS was happenstance. Because Witham was remodeling her home, she was in contact with County of Orange Code Enforcement. Witham called a code enforcement officer and left her a telephone message. But Witham did not hang up the telephone. Witham and Hayde then discussed guns. When the code enforcement officer listened to the telephone message, she heard the conversation about the guns. She referred the matter to the OCSD.

They also found hundreds of ammunition rounds. None of the weapons were registered. At Hayde's residence, investigators found two .38 caliber handguns and ammunition.

A couple days later, Hayde who had been arrested and was in jail, spoke with Witham. Witham told Hayde she met with and paid his attorney. When Witham said police went to the storage unit and found the guns, he said, "I don't know what you're talking about. Don't say anything like that. Don't say anything more." Hayde told her not to discuss the case and "it's not my storage so don't." Hayde asked Witham to do him a favor, "do what you can and get those keys off my property. Okay?" He repeated that with respect to the storage unit, he did not know what she was talking about and "None of that stuff was mine."

An SPS manager sent Kinney the rental agreement records for unit F69 (Agreement). The Agreement was signed February 25, 2013, and it showed the unit was rented to an individual named "Bryan Becker." Investigators ran the driver license number Hayde had provided SPS, but it did not come back to an individual with that name.

A felony complaint and two amended felony complaints charged Hayde with numerous offenses stemming from items officers recovered from Hayde's storage unit. Between the time of filing the first and second amended felony complaints, the trial court, Judge Walter P. Schwarm, granted Hayde's motion to represent himself pursuant to *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

After another trial court judge, James L. Crandall, denied Hayde's motion to suppress evidence and quash the search warrant of his home and person for lack of probable cause, the court conducted a preliminary hearing. At the preliminary hearing, the prosecution offered Kinney's testimony. Kinney testified he interviewed Witham, who said three weeks earlier she and Hayde went to Oregon and purchased guns and ammunition. She stated Hayde put the guns and ammunition in a storage unit. Kinney said when OCSD sheriff deputies searched Hayde they found keys to a storage unit where

they later recovered three assault weapons, ammunition, anabolic steroids, and documents with Hayde's name.

On cross-examination, Hayde questioned Kinney regarding his knowledge of the storage unit. The following colloquy occurred on pages 132-133 of the preliminary hearing transcript:

“[Hayde]: Were you aware that the storage facility was arranged in a fictitious name with the name of Brian Becker?”

“[Kinney]: Before the search warrant?”

“[Hayde]: Yes.

“[Kinney]: No.

“[Hayde]: But you had -- you knew later when you went to the search warrant -- right, you found out when you went to the storage facility; correct?

“[Kinney]: I found out it was in Brian Becker's name after the search warrant.

“[Hayde]: But when you sat . . . Witham down, you told her you knew about the storage facility?

“[Kinney]: That is correct.

“[Hayde]: Okay. Now, would it surprise you to learn that there is no way you could have known about it because the defendant specifically set it up in a fictitious name that no one, that not even . . . Witham knew. Nobody could have known it.

“[Prosecutor]: Objection, your honor. Calls for speculation.

“[Hayde]: I'm the defendant.”

Later, Hayde questioned Kinney concerning how he obtained the search warrant for the storage unit. The prosecution objected on relevance grounds because there was no motion to suppress pending and second if there was an issue as to the search of the storage unit, Hayde had to establish standing. The following colloquy occurred on pages 152-153 of the preliminary hearing transcript:

“[Trial court]: Just as you were called to contest the search warrant of the house, you agreed and admitted that you were a resident at the time. [¶] The question now is, with regard to the other search warrant of the storage facility, you wouldn’t have standing unless you agreed it was your storage unit.

“[Hayde]: Well, I have already specified that the storage unit was a setup in a fictitious name.

“[Trial court]: Are you the owner?

“[Hayde]: Yes.”

Later, Hayde questioned Kinney about the storage facility and the state of its contents. After Hayde stated, “I’m very familiar with the storage facility[.]” and the prosecutor objected on relevance grounds, the trial court sustained the objection and stated, “You do understand the transcript of this is evidence. . . . The statements you make can be used against you.” Hayde answered, “I understand that.”

Later, on pages 163-165 of the preliminary hearing transcript, Hayde asked Kinney whether he found the ammunition separate from the SKS rifle, the prosecutor objected on relevance grounds, and the court sustained the objection. Hayde explained to the court he was “trying to establish evidence so [he] [could] finalize [his] suppression motion.” When Hayde continued, he explained how the ammunition cans were closed and wrapped in trash bags. Hayde added, “I know, because I put them in there. I’m admitting it, yes, because we have significant search and seizure issues . . . at the storage facility.” The court held Hayde to answer, the prosecution filed an information, and the matter was assigned to Judge Patrick Donahue.

An information amended by interlineation charged Hayde with the following: possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1), all further statutory references are to the Penal Code, unless otherwise indicated) (count 1); three counts of unlawful assault weapon activity (§ 30600, subd. (a)) (counts 2, 3 & 4); two counts of possession of a large capacity magazine (§ 32310) (counts 5 & 6);

possession of ammunition by a prohibited person (§ 30305, subd. (a)(1)) (count 7); possession for sale of a controlled substance (Health & Saf. Code, § 11378) (count 8); possession of forged driver's license and identification card to facilitate forgery (§ 470b) (count 9); misdemeanor possession of controlled substance paraphernalia (Health & Saf. Code, § 11364.1, subd. (a)) (count 10); and false personation (§ 529, subd. (a)(3)) (count 11). As to count 8, the information alleged Hayde was personally armed with a firearm during the commission of a Health and Safety Code violation. The information also alleged Hayde suffered a serious and violent felony (§§ 667, subds. (d) & (e)(1), 1170.12, subds. (b) & (c)(1)).<sup>2</sup> The trial court, Judge Patrick Donahue, revoked Hayde's pro. per. status and appointed the Orange County Public Defender (OCPD) to represent him over Hayde's repeated, strenuous objections.<sup>3</sup>

Before trial, the prosecution moved in limine to admit some of Hayde's statements from the preliminary hearing. At the hearing on the motion, the prosecutor confirmed there were passages from 14 pages of testimony she sought to admit. The trial court indicated it would review the testimony and applicable case law that afternoon and rule the following morning. The next morning the court provided its tentative rulings on the prosecution's motion to admit, granting it in part and denying it in part. As relevant here, the court tentatively excluded Hayde's statements on pages 132-133 of the preliminary hearing transcript and tentatively admitted Hayde's statements on pages 153 and 165 of the preliminary hearing transcript pursuant to Evidence Code section 1220.

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Before trial, on the prosecution's motion, the trial court dismissed counts 10 and 11. After the close of evidence, the trial court granted Hayde's motion to dismiss count 8 pursuant to section 1118.1.

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The court noted that since the matter was assigned to its department, Hayde appeared 15 times, and filed 71 motions and 49 affidavits and declarations. Later, the OCPD, the Alternate Defender, and the Associate Defender all declared conflicts. The court appointed conflict counsel who represented Hayde for the duration of the proceedings.

At trial, the prosecution offered Witham's testimony as described above. She was granted immunity in exchange for her testimony. Recordings of Kinney's interview of Witham, and Hayde's jail telephone call with Witham, were played for the jury. The parties stipulated Hayde was a convicted felon.

Kinney acknowledged he previously testified at the preliminary hearing in which Hayde represented himself. The prosecutor showed Kinney page 153 of the preliminary hearing transcript and asked him whether he recalled Hayde stating the storage unit was set up in a fictitious name and he was the owner. Kinney replied, "Yes." The prosecutor showed Kinney page 165 of the preliminary hearing transcript and asked him if he recalled Hayde stating he knew the ammunition cans were individually wrapped in trash bags because he put them there. Kinney responded, "Yes." Defense counsel did not object to this line of questioning.

The prosecution sought to admit the Agreement over Hayde's objection on foundation grounds, specifically there was no evidence connecting the Agreement for "Bryan Becker" to Hayde. At an Evidence Code section 402 hearing, the prosecution offered the testimony of Mark Robinson, an SPS manager, to lay the foundation for the business record. Robinson testified he was not employed at SPS when the Agreement was executed. Robinson explained the process a customer must complete to rent a storage unit. He added that when the customer completes that information, an SPS employee immediately enters the information on the computer, which generates a rental agreement. He stated that although he could not locate the hard copy of the Agreement, and did not provide a copy to the prosecution, he had a digital copy. Additionally, he could not locate a copy of the driver's license or payment information associated with the unit. He stated the Agreement the prosecution sought to admit was a printout of the rental agreement contained in SPS computer files; he recognized the initials of former managers in the notes section of the computer record. After counsel argued, the trial court ruled the Agreement was admissible as a business record because it was made at or



near the time the actual event was recorded in the normal course of business. The court later admitted the Agreement into evidence.

A forensic scientist specializing in analyzing firearms testified regarding three assault rifles, a Russian SKS, an AR-15, and Romarm SAR-1. All three weapons were operable.

Hayde rested on the state of the prosecution's evidence. Defense counsel conceded Hayde was guilty of all counts, except counts 2, 3, and 4. As to counts 2, 3, and 4, counsel attacked the expert's testimony concerning the weapons and asserted the three rifles were not assault weapons.

The jury convicted Hayde of all remaining counts. At a bifurcated bench trial, the trial court found true Hayde suffered one prior strike conviction and denied Hayde's motion to strike pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The trial court sentenced Hayde to prison for 20 years as follows: count 2-six years doubled to 12 years; count 3-two years doubled to four years; and count 4-two years doubled to four years. The court imposed concurrent terms on counts 1, 5, 7, and 9. The court imposed and stayed a term on count 6.

## DISCUSSION

### *I. Admission of Evidence*

Hayde argues the trial court committed two evidentiary errors. First, Hayde asserts admission of his preliminary hearing statements forced him to surrender his Fifth Amendment right not to incriminate himself to exercise his Sixth Amendment right to represent himself.<sup>4</sup> (*Simmons v. United States* (1968) 390 U.S. 377, 394 [intolerable a constitutional right surrendered to assert another].) Second, he contends there was insufficient foundation to warrant admission of the Agreement as a business record

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The trial court admitted these statements as party admission pursuant to Evidence Code section 1220. Hayde does not dispute his statements were admissible pursuant to that section.

pursuant to Evidence Code section 1271. We need not address the merits of Hayde's claims because he was not prejudiced by any error.

Hayde raises both a federal constitutional error, which we would analyze pursuant to *Chapman v. California* (1967) 386 U.S. 18 (*Chapman*), and a California state law error, which we would analyze pursuant to *People v. Watson* (1956) 46 Cal.2d 818. Even under the more onerous standard for evaluating claims of federal constitutional error, *Chapman, supra*, 386 U.S. 18, we conclude Hayde was not prejudiced because any error was harmless beyond a reasonable doubt. Under the *Chapman* test, error is harmless when it appears "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." (*Chapman, supra*, 386 U.S. at p. 24.) Here any error did not contribute to the guilty verdicts.

Other than the evidence Hayde objects to, there was overwhelming evidence the storage unit and its contents, including the assault weapons, belonged to Hayde. At trial, Witham testified she and Hayde drove from Oregon directly to SPS. The jury heard Witham's recorded statements to Kinney that the SPS storage unit belonged to Hayde and he stored the weapons there. She had been to the storage unit once before with Hayde, but she had not been inside. She did not have a key to the storage unit, only Hayde had a key. In fact, when investigators searched Hayde, they recovered keys they later used to access the storage unit. Witham waited in the car while Hayde put the rifles and ammunition in the storage unit; she did not know what was inside the storage unit.

Additionally, Witham was an unlikely owner of the assault weapons. The evidence demonstrated Witham was not interested in guns before she met Hayde. Seventy-two-year-old Witham stated she did not know much about the guns she purchased, how to load them, or how to use them. Before they went to Oregon, Hayde gave Witham a list of ammunition to purchase. Although there was no evidence Hayde told Witham which guns to purchase, the jury heard evidence a septuagenarian single

woman with no knowledge of weapons drove out of state to a gun show and purchased two assault weapons using cash not at the gun show, but outside from unknown sellers. It was not reasonable to conclude Witham purchased the assault weapons for herself. Based on all the evidence, it is clear beyond a reasonable doubt admission of Hayde's statements during the preliminary hearing and the Agreement did not contribute to the verdict.

## *II. Cumulative Error*

Hayde asserts the cumulative effect of the error was prejudicial. We disagree. Irrespective of Hayde's statements and the Agreement, as we explain above, there was overwhelming evidence the assault weapons belonged to Hayde. (See *People v. Tate* (2010) 49 Cal.4th 635, 694 [individually or in combination and judged by any standard of prejudice alleged prosecutorial misconduct did not influence outcome].)

## DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

THOMPSON, J.